

Ministry of Transport and Sustainable Mobility

**INFORMATION ON PROCEDURES FOR THE
ASSIGNMENT, CONTROL AND REVOCATION OF
TRAFFIC RIGHTS IN ACCORDANCE WITH RD
1678/2011**

Directorate General of Civil Aviation (DGCA)



INDEX

1. ACCESS TO INFORMATION	3
2. ASSIGNMENT OF TRAFFIC RIGHTS	4
3. MORATORIUM / DELAY IN THE FULFILLMENT OF OBLIGATIONS	7
4. CONTROL OF TRAFFIC RIGHTS	8
5. REVOCATION OF TRAFFIC RIGHTS	11

PREAMBLE

This document summarizes the information considered as essential regarding the criteria and conditions used by the Directorate General of Civil aviation (DGCA) in the procedures for the assignment, control and revocation of traffic rights carried out in application of the Spanish **Royal Decree 1678/2011 of 18 November¹**.

Both the criteria and the conditions set forth in this document correspond to a consensus reached with the sector (airlines and main associations), through a consultation procedure that took place during the second half of 2014. In those cases where consensus was not possible, the DGCA established the criterion following the sector's opinion and the safeguarding of general interests.

¹ <http://www.boe.es/boe/dias/2011/12/15/pdfs/BOE-A-2011-19527.pdf>

1. ACCESS TO INFORMATION

All information concerning the procedures for the allocation and revocation of traffic rights developed by the DGCA (including this note) can be consulted on the website (Ministry of Transport and Sustainable Mobility), in the Air Transport section, by accessing the following: *Organización del Sector Aéreo - Convenios de Transporte Aéreo - Derechos de Tráfico* (Air Sector Organization - Air Transport Agreements - Traffic Rights).



You may also contact directly the **International Agreements Area**, the unit in charge of processing the procedures, through the following contact email:

[Email: convenios.dgac@transportes.gob.es](mailto:convenios.dgac@transportes.gob.es)

2. ASSIGNMENT OF TRAFFIC RIGHTS

- **Scope of application**

The procedures for the assignment of traffic rights regulated by the Spanish Royal Decree 1678/2011 **only apply in air markets (Spain – Third Countries³) in which there are limitations.**

Limitation shall be understood as: any restriction to the free exercise of traffic rights arising from the legal framework governing air transport relations between Spain and said third country. The restriction may refer to the **total number of airlines** that may be designated to operate in the market, or the **capacity** or maximum number of weekly frequencies that designated airlines may operate.

IMPORTANT NOTICE

In markets where there is **no limitation**, airlines may operate freely, that is, without the need for a prior assignation, **provided they comply with the market access conditions established by the applicable legal framework.**

In order to begin operating, most markets require, at a minimum:

- a) the airline's **formal designation** (procedure carried out by the Ministry of Foreign Affairs and Cooperation, at the request of the DGCA).
- b) the prior authorization of operations, a procedure carried out in Spain before the **Spanish Aviation Safety and Security Agency (AESA).**

- **Resolution to Initiate**

The **Resolution to Initiate** is the resolution of the Director General of Civil Aviation that officially initiates the procedure for the corresponding assignment, and it establishes the basic parameters of application to it, specifically:

- Traffic rights that will be assigned.
- Time period in which the operations⁴ are to begin.

3 The European Union's internal market, including the EFTA countries (Norway, Switzerland, Iceland, and Liechtenstein) is fully liberalized for European companies.

4 As a general rule, this period shall be **12 months** as of the date of publication of the Resolution to Initiate on the DGCA website. In markets where turnout is very high, said period could be reduced to **9 months**.

- Deadline for application submission: **10 business days⁵** starting from the date of notification of the resolution to initiate, or otherwise from the date of publication on the Ministry's website.
- Conditions for submitting the application (place of submission, requirements, etc.).
- Criteria by which operational projects will be assessed and frequencies will be distributed in the event that the available rights are not sufficient to meet all demands.
- **Participation in the procedures**

IMPORTANT NOTICE

All the documentation required to participate in the assignment procedure will be available for download on the Ministry's website. Within each open procedure, it will be possible to download the documents related to it, among which are the **Resolution to Initiate the procedure itself, the assessment criteria and the standardized participation request form (FORM-SGTA.CONV.01)**.

The use of the form is optional, however, **its use is recommended**, as it facilitates the drafting of the operational project and the standardization of the necessary information.

In the event that the application submitted is incomplete, or errors are detected in it, the company will be requested to **correct** them, for which it will have **10 business days** from the moment it is notified of said need to correct them. **No improvements to the operational project shall be admitted during the correction.**

If the company does not submit the corrected documentation that was requested to submit within the period indicated, the application shall be considered **withdrawn**, notwithstanding that this must be notified in writing to the applicant.

- **Assessment of the operational projects and distribution of rights.**

In the event that the available rights **are not sufficient** to meet the demand of all interested parties, the operational projects submitted will be assessed **following the criteria set forth in the Annex to the Resolution to Initiate**.

It is of particular importance to pay attention to Annex item No. 2, since it sets forth the weight given to each of the criteria by which the project shall

⁵ All days of the week are considered business days except for Saturdays, Sundays and holidays

be assessed, which will vary from procedure to procedure depending on the characteristics of the considered market.

The two most important general aspects to be taken into account in the assessment of the operational projects are the **consistency** of the data submitted and the **rationale** behind all scenarios, forecasts or estimations that have been considered.

The result of the project assessment will be described in a **technical appraisal report** that will be sent to the interested parties for their consideration. **Said report will not contain commercial or sensitive information of the participants** in the procedures in order to safeguard the airlines' interests. It is possible to submit allegations against the technical appraisal report.

Once the definitive assessment of the projects has been completed, the definitive distribution of the available rights will be established, **always starting with the company whose project obtains the highest absolute score**, followed by the second one, and so on.

The rights will be distributed following the order of priority mentioned above, **until there are no available rights left**, for which reason some companies may not receive any traffic rights in the distribution, since they were given to the companies that obtained the highest scores in their operating projects.

- **Possibility to contest**

Airlines participating in a procedure may **contest or submit allegations** against it at any given time, however, two of them are considered to be of particular relevance:

1. After the notification of the **technical report on project assessment** and the initial proposal for the assignation of rights.
2. After the notification of the start of the **hearing process**, immediately prior to the drafting of the final assignation resolution.

All the allegations submitted before or during the hearing process **shall be considered in the procedure, either in an affirmative or negative manner**. In case of rejection, the final resolution of assignment of rights will describe the causes.

- **End of the procedure**

A resolution of the Director General of Civil Aviation shall bring the procedure to an end and the **definitive assignation** of traffic rights will be decided. The resolution shall include the specific **obligations** of the airlines that have been awarded the assigned rights.

The resolution shall be published on the Ministry's website and notified to each of the interested parties.

Interested airlines may **appeal** the resolution before the General Secretariat of Transport and Mobility, within **one month** from its publication.

3. MORATORIUM / DELAY IN THE FULFILLMENT OF OBLIGATIONS

Companies benefitting from an assignment procedure must comply with the obligations established in the assignment resolution or otherwise with the operational conditions declared in their operational project.

Nevertheless, Royal Decree **1678/2011 foresees two possibilities of exemption from the fulfilment of such obligations**, both subject to prior approval by the Directorate General of Civil Aviation.

IMPORTANT NOTICE

As a general rule, the request for either of these two exemptions must be made **prior to the interruption of the service**, if it is already in operation, and **in any case** prior to the end of the period granted for the starting or resumption of services, if the service was already interrupted.

Exceptionally, requests that do not comply with this condition may be considered if the DGCA considers that this does not harm the legitimate interests of third parties.

A) MORATORIUM

- It allows exemption from any of the obligations, **except for those related to compliance with applicable laws and regulations.**
- **Force majeure causes** are necessary for its concession.
- The authorization of the moratorium, if applicable, shall establish **the obligation or obligations exempted** from compliance, as well as the **term of exemption**, which in no case may be indefinite or indeterminate.

FORCE MAJEURE CAUSES

Unforeseeable or highly improbable circumstances, beyond the company's will and over which it has no control, or over which it cannot act without incurring a loss that would not be reasonable to impose on the company.

B) DELAY

- Allows exemption exclusively from the obligation to start or resume services within a specific period of time.
- Requires the concurrence of **justified causes**, not necessarily of *force majeure*.
- The authorization of the delay, if applicable, will establish the period of exemption granted, which **shall never exceed 6 months**.

IMPORTANT NOTICE

The delay period, if applicable, shall begin from the last day on which the company should have started or resumed its services, or from the date on which it interrupted them, **not from the date of request**.

4. CONTROL OF TRAFFIC RIGHTS

Royal Decree 1678/2011 establishes that the Directorate General of Civil Aviation is responsible for verifying the **effective use** of traffic rights by the airlines that have been assigned them, and revoking those rights that are not being used in accordance with the established obligations.

The following criteria have been established for the development of this procedure:

- **Market typology (for control purposes)**

A. Non-limited markets

Markets in which the operating framework regulating them does not establish limitations, either in the number of companies that may operate in them or in the number of frequencies that may be exploited.

Control in these markets is limited to that provided for in Article 20 of Royal Decree 1678/2011, and no rights shall be revoked unless there is a clear breach of regulations, or unless there are compelling reasons of general interest that make it advisable to do so.

B. Limited markets

All markets subject to some type of limitation either in the number of companies that may operate in them, or in the number of frequencies that each company may exploit, with the exception set forth for Group C.

These markets shall be subject to the general control regime provided for in Royal Decree 1678/2011 with the application criteria described in this note.

C. Limited markets, assimilated to non-limited markets

For the exclusive purposes of controlling rights, a limited market shall be considered to be "assimilated" to a non-limited market (Group A), if each and every one of the following conditions are met:

1. That a company can be designated as applying for this type of market.
2. That a minimum of **3 weekly frequencies** are available.
3. That during the control period considered no air carrier has applied to the DGCA for designation, or frequencies in that market, so that its request could not be fulfilled due to lack of capacity or limitation of designations.

These markets are subject to the general control regime (Group B), but applying a less demanding criterion for effective use, as described below.

IMPORTANT NOTICE

This is a **dynamic** group, that is, a country may enter or leave the group depending on whether or not the conditions indicated **at the time of the control** are met.

- **Types of control procedures**

- a) Ad hoc or timely control** in order to regularize particular markets. It is normally carried out prior to the opening of a procedure for the assignment of frequencies, or due to a "claim" or "complaint" for underutilisation of rights in such market, or due to the interest of a company in entering the market.
- b) Regular (periodic) control**, in order to continuously verify the effective use of traffic rights **in all limited markets**.

This control shall be carried out **once a year**, as a general rule and without entailing any kind of commitment on the part of the DGCA, **at the end of January or beginning of February**, as soon as the complete data of the operations carried out during the full calendar year just ended are available.

- **Control period**

In both types of control procedures, the period of time over which the use or non-use of rights will be verified will cover the **full calendar year** (from January to December) immediately ended.

- **Criteria for assessing the effective use of traffic rights**

An airline shall be considered as **not having made effective use** of its assigned traffic rights during the control period considered when one or more of the following circumstances apply (each circumstance shall be evaluated separately for each assigned frequency, not for the set of frequencies as a whole):

- The operation **was not started** within the deadline established in the assignment resolution or, failing that, in the **Resolution to Initiate** or, failing both, in the **operational project** submitted by the air carrier.

OBSERVATIONS: Starting operations after the established deadline **will not prevent the right from being considered underutilised**.

- **Failure to resume** services previously interrupted within the deadline established in the **delay** or **moratorium** for which such interruption has been authorized, provided that such interruption is not considered in the allocation resolution or, failing both, in the **operational project**, as part of the company's normal operations for that market.
- **The operation of services was interrupted** without the corresponding delay or moratorium being duly authorized, with the following considerations regarding what is considered an interruption:

- In limited markets, assimilated to non-limited markets (Group C):

In these markets, the operation will be considered as **not having been interrupted** if the right has been exercised **in at least one (1) of the weeks** of the control period considered.

- In the rest of markets with limitations (Group B):

Services shall be considered as not having been effectively operated if the right has not been exercised in **at least 65% of the weeks** of the control period considered (approximately 34 weeks per year).

- **Other “exceptional” causes**, such as AOC withdrawal and the ceasing of operations, etc.

IMPORTANT NOTICE

Traffic rights that have been used according to the regime for their use set forth in the assignment resolution or, failing that, in the operational project **shall not be considered underutilised**.

No traffic right shall be revoked until the end of the term established in the assignment resolution (or, failing that, in the Resolution to Initiate) as **the deadline for starting the services**. Likewise, rights that have not been initiated or that have been interrupted will not be revoked if they are within the delay or moratorium period granted.

5. REVOCATION OF TRAFFIC RIGHTS

Traffic rights assigned in limited markets that have not been effectively used during the established control period shall be revoked.

Additionally, in markets with a limited number of designations, the DGCA may **replace the airline designated** if the currently designated airline is clearly underutilising the granted rights, and its designation is preventing the entry of another interested airline.

Once the traffic rights subject to revocation through the control procedure have been determined, the DGCA will initiate the revocation procedure *ex officio*, notifying the airline concerned. The company will have a period of **ten (10) working days** to submit any allegations or evidence it deems appropriate from the date of receipt of said notification.

Pursuant to the allegations presented, some rights initially considered as subject to revocation may not be finally revoked.

IMPORTANT NOTICE

In no case shall the allegations be detrimental to the company lodging them.

Once the deadline for allegations has expired, the Director General of Civil Aviation shall definitively revoke the traffic rights not being effectively used, by

way of a resolution which shall be notified to the interested party and which may be appealed by lodging an appeal to the Secretary General of Transport within a period of one month.

IMPORTANT NOTICE

The revocation shall take effect from the date set forth in the corresponding resolution.